IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

MFA.No. 1471 of 2001(B)

OPMV.1629/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT:

THE ORIENTAL INSURANCE CO. LTD.,
KOTTAYAM, represented BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE,
ERNAKUKLAM, KOCHI -18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:
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1. SUMATHY, W/O. RAJAPPAN,
VELLUSSERY, PEROOR P.O,
DO. VILLAGE, KOTTAYAM.

2. JAYSREE V.R. D/O. RAJAPPAN,
-DO- -DO-.

3. BABUMON V.R., S/O. RAJAPPAN,
-DO- -DO- .

4. AMBILY V.R. (MINOR)
-DO- -DO-

5. AJITHA V.R. (MINOR)
-DO- -DO-.
(RESPONDENTS 4 AND 5 ARE REPRESENTED BY NEXT FRIEND AND GUARDIAN THE 1ST RESPOSNDENT)

6. P.T. OUSEPH, S.O. THOMAS,
PUTHENPURAYIL HOUSE,
SACHIVOTHAMAPURAM P.O.
CHANGANACHERRY, KOTTAYAM.

7. SABU MANI S/O. T.C. MANI,
KIZHAKKEMOOZHIKKATTIL,
PEROOR P.O,. KOTTAYAM.

R6 & R7 BY ADV. SRI.JOBI JOSE KONDODY
R1 BY SRI.MOHAN PULIKKAL
SRI.PAULCY KURIAN
SMT.A.AMRUTHA VIDYADHARAN
SMT.MANJU RAJAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 06/11/2007, ALONG WITH MFA NO. 1473 OF 2001
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CM.P.NO.9553/01 IN M.F.A.1471/01

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DISMISSED.

ID/- J.B. KOSHY, JUDGE.

6.11.2007 ID/-. K. HEMA, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

J.B.KOSHY & K.H. HEMA, JJ.

M.F.A. No. 1471 & 1473 of 2001

Dated this 6th day of November, 2007

JUDGMENT

Koshy,J:

These two appeals are filed by the Insurance company disputing their liability. The two passengers in the goods vehicle suffered injury in a motor accident and one died and the injured passenger as well as the dependents of the deceased filed application for compensation. The Tribunal found that the accident occurred while they were travelling in the goods vehicle along with goods and therefore Insurance Company is liable to pay the amount following the decision in New India Assurance Co. Ltd v. Satpal Singh [(2000) 1 SCC 237]. The quantum of compensation is also disputed in the appeal. The decision in **Satpal Singh' case** (supra) was overruled in New India Insurane Co.Ltd. v. Asha Rani and others [(2003) 2 SCC 223] and the larger Bench held that passengers in a goods vehicle is not covered under the statutory insurance and after the amendment, owners of the goods and his authorised representative are only

covered. This was affirmed in National Insurance Co.Ltd. v. Baljit Kaur and others (AIR 2004 SC 1340) and Oriental Insurance Co. Lted. v. Nanjappa and others (AIR 2004 SC 1630). It was held that since the Satpal Singh' case (supra) was overruled subsequently in prior cases Insurance company should pay the amount to third parties and recover from the insured in execution of the award itself. The passengers were travelling in a goods vehicle and they will not be in a safe position as the incident occurred in 1991. The Act was amended with effect from 14.11.1994. Therefore, owner and driver cannot get indemnity making use of the amendment also.

In the above circumstances, amount awarded should be deposited by the Insurance Company and the Insurance Company can get the amount reimbursed from the owner and driver of the vehicle in execution of the award. We also note that Tribunal awarded 12% interest from the date of application. Considering the reduction in the rate of interest etc. we reduce the interest from 12% to 9%.

Appeals are allowed to the extent indicated above.

J.B. KOSHY, JUDGE.

K. HEMA, JUDGE.

Krs.

J.B.KOSHY & K.H. HEMA, JJ.

M.F.A. No. 1471 & 1473 of 2001

Dated this 6th day of November, 2007

JUDGMENT